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No. 85-87 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1985

RAMON MILIAN-RODRIGUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence and oral admissions.

On October 18, 1983, petitioner was charged in a superseding indictment returned in the United States District Court for the Southern District of Florida with possession of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); possession of counterfeit currency, in violation of 18 U.S.C. 472; racketeering, in violation of 18 U.S.C. 1962(c) and 1963; foreign travel in aid of racketeering, in violation of 18 U.S.C. 1952; and failure to file currency transaction and transportation reports, in violation of 31 U.S.C. 5313, 5316 and 5322(b). Before trial, petitioner moved to suppress evidence seized pursuant to warrantless searches of his place of business and his residence. On February 1, 1984, the district court granted the motion

in part, suppressing firearms, cocaine, negotiable instruments and United States currency seized from petitioner's place of business on the ground that the search exceeded the scope of petitioner's consent. Pet. App. 10. The district court also suppressed evidence seized from the house (additional firearms and almost $40,000 in counterfeit United States currency) on the ground that the warrantless arrest was illegal under *Payton* v. *New York*, 445 U.S. 573 (1980). Pet. App. 7. On February 2, 1984, the district court entered an order excluding statements made after the arrest as "fruits of the poisonous tree." Pet. App. 16. The court of appeals reversed, concluding that petitioner's consent extended to the search of his place of business and that exigent circumstances justified the government's failure to obtain a warrant before entering petitioner's house. Pet. 2-17.

Petitioner contends (Pet. 22-31) that the court of appeals ignored the limits of his consent, improperly extended the definition of exigent circumstances, and erred in concluding that the statements petitioner made were not the direct result of an illegal warrantless arrest. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court would be premature at this time.[1] See, *e.g.*, *Brotherhood of*

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[1]We note in addition that more than 21 months have already passed since the return of the superseding indictment and more than 17 months have passed since the district court's suppression orders. Petitioner's trial should not be further delayed.

Locomotive Firemen & Enginemen v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U.S. 251, 257-258 (1916); *American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384-388 (1893).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

JULY 1985

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[2]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

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